

PATENT COOPERATION TREATY

From the
INTERNATIONAL PRELIMINARY EXAMINING

To:

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PCT

WRITTEN OPINION

(PCT Rule 66)

Date of mailing
(day/month/year) 17 NOVEMBER 2005 (17.11.2005)

Applicant's or agent's file reference
OP03-0162

REPLY DUE within 2 months from
the above date of mailing

International application No.
PCT/KR2003/002637

International filing date (day/month/year)
03 DECEMBER 2003 (03.12.2003)

Priority date(day/month/year)
26 NOVEMBER 2003 (26.11.2003)

International Patent Classification (IPC) or both national classification and IPC

IPC7 A61K 9/48

Applicant

PARK Hyun-Jin et al

1. This written opinion is the first (first,etc.) drawn by this International Preliminary Examining Authority.

2. This opinion contains indications relating to the following items:

- I ☒ Basis of the opinion
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

3. The applicant is hereby invited to reply to this opinion.

When ? See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66.2(d)

How ? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3
For the form and the language of the amendments, see Rules 66.8 and 66.9

Also For an additional opportunity to submit amendments, see Rule 66.4
For an examiner's obligation to consider amendments and/or arguments, see Rule 66.4bis
For an informal communication with the examiner, see Rule 66.6

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.

4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 06 MARCH 2006 (06.03.2006)

Name and mailing address of the IPEA/KR
Korean Intellectual Property Office
920 Dunsan-dong, Seo-gu, Daejeon 302-701,
Republic of Korea

Facsimile No. 82-42-472-7140

Authorized officer

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WRITTEN OPINION

International application No.

PCT/KR2003/002637

I. Basis of the opinion

1. With regard to the elements of the international application:*

- ☒ the international application as originally filed
- ☐ the description:
 pages _____, as originally filed
 pages _____, filed with the demand
 pages _____, filed with the letter of _____
- ☐ the claims:
 pages _____, as originally filed
 pages _____, as amended (together with any statement) under Article 19
 pages _____, filed with the demand
 pages _____, filed with the letter of _____
- ☐ the drawings:
 pages _____, as originally filed
 pages _____, filed with the demand
 pages _____, filed with the letter of _____
- ☐ the sequence listing part of the description:
 pages _____, as originally filed
 pages _____, filed with the demand
 pages _____, filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language English which is

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☒ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the written opinion was drawn on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheet/fig _____

5.

- ☐ This opinion has been drawn as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed."

WRITTEN OPINION

International application No.

PCT/KR2003/002637

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	1-12	YES
	Claims		NO
Inventive step (IS)	Claims		YES
	Claims	1-12	NO
Industrial applicability (IA)	Claims	1-12	YES
	Claims		NO

2. Citations and explanations

본원발명의 특허청구범위 제1항 내지 제6항은 전분, 가소제, 겔화제 및 물로 이루어진 하드 캡셀용 필름 형성 조성물과 그 제조방법을 청구하고 있고, 특허청구범위 제7항 내지 제10항은 물방 또는 녹두 전분, 가소제 및 물로 이루어진 하드 캡셀용 필름 형성 조성물과 그 제조방법을 청구하고 있으며, 제11항 내지 제12항은 상기 조성물을 포함하는 하드 캡셀용 필름과 하드 캡셀을 청구하고 있습니다.

1. 제1항 내지 제5항, 제7항 내지 제9항

본원발명의 우선일 이전에 공개된 국제특허공보 제00/18835호(2000.04.06., 이하 인용발명이라 한다)에 개질 전분 필름 조성물이 기재되어 있어 양발명을 대비하여 보면, 본원발명의 특허청구범위 제1항 내지 제5항, 제7항 내지 제9항과 인용발명의 목적은 경질캡슐에 적합한 필름 조성물을 제공하는데 있으므로 동일하고, 발명의 구성에 있어 본원발명의 구성요소인 전분, 가소제, 겔화제 및 물이 인용발명의 구성요소로 기재되어 있으며(특허청구범위 제1항, 제6항, 제9항, 제12항 참조), 단지 본원발명의 특허청구범위 제1항 내지 제5항, 제7항 내지 제9항은 전분의 종류와 성분비에 있어 인용발명과 미차가 있으나 당업자라면 조성물에 적절한 전분을 채택할 수 있으며 성분비의 한정은 최적의 조성비를 위하여 단순반복실험하여 선정가능한 정도로 인정되어 구성의 곤란성이 인정되지 않고, 본원발명의 효과가 인용발명에 비하여 각별한 것으로 인정되지 않으므로 본원발명의 특허청구범위 제1항 내지 제5항, 제7항 내지 제9항은 당업자가 인용발명으로부터 용이하게 발명할 수 있는 것으로서 특허법 제29조제2항의 규정에 해당되어 특허받을 수 없습니다.

Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of:

Box. V

2. 제6항, 제10항

본원발명의 특허청구범위 제6항, 제10항에서 청구하고 있는 제조방법과 인용발명의 목적은 경질캡슐에 적합한 필름 조성물의 제조방법을 제공하는데 있으므로 동일하며, 발명의 구성에 있어 물에 가소제를 첨가하고 겔화제, 전분을 첨가하는 구성이 인용발명과 동일하고 단지 인용발명에서는 전분과 겔화제를 혼합한 후에 첨가하는 점에서 미차가 있으나 이는 당업자가 쉽게 설계변경가능한 정도로 인정되어 구성의 곤란성이 인정되지 않고, 본원발명 특허청구범위 제6항, 제10항의 효과가 인용발명에 비하여 각별한 것으로 인정되지 않으므로 본원발명의 특허청구범위 제6항, 제10항은 당업자가 인용발명으로부터 용이하게 발명할 수 있는 것으로 특허법 제29조제2항의 규정에 해당되어 특허받을 수 없습니다.

3. 본원발명의 특허청구범위 제11항 내지 제12항에서 청구하고 있는 하드 캡셀용 필름과 하드 캡셀은 포함하는 조성물에 특징이 있는 것으로서 조성물은 상기 1.에서 기재한 바와 같이 진보성이 인정되지 않으므로, 본원발명의 특허청구범위 제11항 내지 제12항은 당업자가 인용발명으로부터 용이하게 발명할 수 있는 것으로 인정되어 특허법 제29조제2항의 규정에 의거 특허받을 수 없습니다.